



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,991	08/01/2003	Herbert L. Berman	VVMDNZ00201	8976
40518 7590 08/06/2008 LEVINE BAGADE HAN LLP 2483 EAST BAYSHORE ROAD, SUITE 100 PALO ALTO, CA 94303				
EXAMINER				
WINAKUR, ERIC FRANK				
ART UNIT		PAPER NUMBER		
3768				
MAIL DATE		DELIVERY MODE		
08/06/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/632,991

Applicant(s)

BERMAN ET AL.

Examiner

Eric F. Winakur

Art Unit

3768

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29-31 and 33-50 is/are pending in the application.
4a) Of the above claim(s) 37-44 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 29-31, 33-36 and 45-50 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 01 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 2/5/08
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

2. Claims 29, 30, 33 - 36, and 45 - 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heinonen '020 in view of Heinonen '586 and Berman (WO 00/21437). Heinonen '020 teaches a patient monitoring system that includes a mobile phone that may include an integrated communication and measuring device that can communicate a subject's glucose measurement and data related to the subject's diet, medication, and physical strain to a processing location that includes a mathematical model for predicting the subject's glucose level at a future time. Further, the computed data is transmitted to the subject's mobile phone which outputs the results for the subject's use. Heinonen '020 teach all of the features of the claimed invention except that the measuring device is a non-invasive monitor. Heinonen '586 teach a system related to the Heinonen '020 invention that includes an integrated mobile phone and measuring device, wherein the measuring device can be a non-invasive device (column 5, lines 14 - 20). It would have been obvious to one of ordinary skill in the art at the time of the invention to implement Heinonen '020 with a non-invasive measuring device, since Heinonen '020 requires a measuring device in their system and Heinonen '586 teaches that a non-invasive measuring device may be included in such a system. The combination of Heinonen '020 and Heinonen '586 teaches that data related to a subject's glucose level is supplied from the subject's device to the data processing

system for incorporation in the mathematical model, but do not teach particular details of the non-invasive glucose measurement system. Berman teaches a non-invasive glucose sensor that obtains measurements from a sample on a skin surface of the patient and further provides details related to calibration of the sensor. It would have been obvious to one of ordinary skill in the art at the time of the invention to include a non-invasive glucose sensor as taught by Berman in the arrangement, since the measuring arrangement of Heinonen requires a non-invasive sensor of conventional design, and Berman teaches one such sensor.

3. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heinonen '020, Heinonen '586, and Berman as applied to claim 29 above, and further in view of Mault. The combination, in particular Heinonen '020 (column 1, lines 50 - 65), teaches using data relating to physical strain in calculation of the glucose level of the subject, but do not particularly teach obtaining this information with a sensor. Mault, see Figure 15 embodiment and the description thereof, teach that an apparatus may include an activity sensor for measuring parameters related to activity of a subject. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the combination to include an activity sensor, as taught by Mault, since the combination requires information related to physical strain of a subject and Mault teaches one manner to obtain this required information.

Response to Arguments

4. Applicant's arguments with respect to claims 29 - 31, 33 - 36, and 45 - 50 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric F. Winakur whose telephone number is 571/272-4736. The examiner can normally be reached on M-Th, 7:30-5; alternate Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571/272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eric F Winakur/
Primary Examiner, Art Unit 3768